

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

KERRI SPOOR,

Plaintiff,

v.

Civil Action No. 5:10CV42
(STAMP)

PHH MORTGAGE CORPORATION,

Defendant.

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION TO
FILE FIRST AMENDED COMPLAINT

I. Background

The plaintiff, Kerri Spoor, filed the above-styled civil action in the Circuit Court of Ohio County, West Virginia, against defendant PHH Mortgage Corporation ("PHH Mortgage") and defendant Susan V. Raper, alleging several claims surrounding the refinancing of the plaintiff's home. The action was later removed to this Court.

On May 25, 2010, the plaintiff filed a notice of dismissal of defendant Raper as a party defendant. This Court granted that notice of dismissal on June 2, 2010. Currently before this Court is the plaintiff's motion to file first amended complaint. The remaining defendant, PHH Mortgage, has not filed a response. For the reasons set forth below, this Court grants the plaintiff's motion to file first amended complaint.

II. Applicable Law

Federal Rule of Civil Procedure 15(a)(1)(A) states, in pertinent part, that "[a] party may amend its pleading once as a

matter of course . . . before being served with a responsive pleading." If a party seeks to amend its pleadings in all other cases, it may only do so "with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

Rule 15(a) grants the district court broad discretion concerning motions to amend pleadings, and leave should be granted absent some reason "such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment or futility of the amendment." Foman v. Davis, 371 U.S. 178, 182 (1962); see also Ward Elec. Serv. v. First Commercial Bank, 819 F.2d 496, 497 (4th Cir. 1987); Gladhill v. Gen. Motors Corp., 743 F.2d 1049, 1052 (4th Cir. 1984).

III. Discussion

In this motion, the plaintiff requests that she be granted leave to amend her complaint so as to remove defendant Raper as a party defendant. As stated above, Rule 15(a) grants the court broad discretion, and a court should grant leave to amend absent an improper motive such as undue delay, bad faith, or successive motions to amend that do not cure the alleged deficiency. See Ward Elec Serv., 819 F.2d at 497.

After a review of the record, this Court concludes that the plaintiff has not exhibited any undue delay, bad faith, or dilatory

motive. Moreover, the prejudice to the defendant is not significant as to prevent this Court from allowing the amendment, and this Court cannot conclude that the plaintiff's amendment would be futile. Accordingly, this Court grants the plaintiff's motion to file first amended complaint.

IV. Conclusion

For the reasons set forth above, the plaintiff's motion to file first amended complaint is hereby GRANTED. The Clerk is DIRECTED to file the amended complaint, which was attached as "Exhibit A" to the plaintiff's motion to file first amended complaint, Docket No. 31. The plaintiff is DIRECTED to serve the amended complaint on the defendant. The party served with the amended complaint shall make any defenses pursuant to Federal Rule of Civil Procedure 12 and any counterclaims or cross-claims pursuant to Federal Rule of Civil Procedure 13.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: June 16, 2010

/s/ Frederick P. Stamp, Jr.

FREDERICK P. STAMP, JR.

UNITED STATES DISTRICT JUDGE